

## CONSUMER CREDIT (AMENDMENT NO 2) INSTRUMENT 2015

### Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited fixes and varies the standard terms for Voluntary Jurisdiction participants as set out in Annex D to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary jurisdiction);
  - (2) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
  - (3) paragraph 22 (Consultation) of Schedule 17.
- B. The fixing and variation of the standard terms in Annex D by the Financial Ombudsman Service Limited is subject to the approval of the Financial Conduct Authority.

### Powers exercised by the Financial Conduct Authority

- C. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Act:
- (1) section 137A (The FCA’s general rules);
  - (2) section 137R (Financial promotion rules);
  - (3) section 137T (General supplementary powers);
  - (4) section 139A (The FCA’s power to give guidance);
  - (5) section 226 (Compulsory jurisdiction); and
  - (6) paragraph 13 (FCA’s rules) of Schedule 17.
- D. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority consents to and approves the standard terms fixed and varied by the Financial Ombudsman Service Limited.

### Commencement

- F. (1) Subject to (2), this instrument comes into force on 2 November 2015.  
(2) Annex B (COND), Annex D (DISP), Part 1 of Annex E (CONC) and Annex F (PERG) to this instrument come into force on 28 September 2015.

### Amendments to the Handbook

- G. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Principles for Businesses (PRIN)	Annex A

Threshold Conditions (COND)	Annex B
Supervision manual (SUP)	Annex C
Dispute Resolution: Complaints sourcebook (DISP)	Annex D
Consumer Credit sourcebook (CONC)	Annex E

### **Amendments to material outside the Handbook**

- H. The Perimeter Guidance manual (PERG) is amended in accordance with Annex F to this instrument.

### **Notes**

- I In Annex E, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

### **Citation**

- J. This instrument may be cited as the Consumer Credit (Amendment No 2) Instrument 2015.

By order of the Board of the Financial Ombudsman Service Limited  
23 September 2015

By order of the Board of the Financial Conduct Authority  
24 September 2015

## Annex A

### Amendments to the Principles for Businesses (PRIN)

In this Annex, underlining indicates new text.

#### 3 Rules about application

...

#### 3.4 General

...

##### Guarantors etc

- 3.4.3A R (1) Paragraph (2) applies in relation to an individual who:
- (a) has provided, or is to provide, a guarantee or an indemnity (or both) in relation to a regulated credit agreement, a regulated consumer hire agreement or a P2P agreement; and
  - (b) is not the borrower or the hirer.
- (2) If the individual is not a customer, they are to be treated as if they were a customer for the purposes of Principles 6 and 7.
- (3) For the purposes of this rule, a guarantee does not include a legal or equitable mortgage or a pledge.

## Annex B

### Amendments to the Threshold Conditions (COND)

In this Annex, underlining indicates new text and striking through indicates deleted text.

**Comes into force on 28 September 2015**

#### 1.1A Application

...

To what extent does COND apply to credit firms with limited permission?

##### 1.1A.5A G ...

- (3) Paragraph 2G of Schedule 6 to the *Act* defines relevant credit activity for the purposes of the *FCA Threshold Conditions*. The interpretation of some of the key expressions used in this specific context is as follows:

...

- (d) “domestic premises supplier” means a supplier who sells goods, offers or agrees to sell goods, or offers or contracts to supply services, or supplies services to customers who are individuals while the supplier or the supplier’s representative is physically present in the dwelling of the customer or in consequence of an agreement concluded whilst the supplier was physically present in the dwelling of the customer (though a supplier who does so only on an occasional basis is not to be treated as a “domestic premises supplier” unless the supplier indicates to the public at large, or a section of it, the supplier’s willingness to attend, in person or through a representative, the dwelling of a potential customer in order to do any of those things).
- (3A) Questions may arise over whether a supplier who visits a customer’s dwelling to take measurements or give an estimate is a “domestic premises supplier”. For example:
- (a) if the supplier, or the supplier’s representative, gives a quote or estimate to the customer during the visit that is sufficiently specific as to be capable of being accepted in a way that is binding on the supplier, then the quote or estimate is an offer; on that basis, the supplier falls within the definition of “domestic premises supplier”, irrespective of whether the customer accepts the offer during the visit;

- (b) where the supplier, or the supplier’s representative, gives only a rough estimate or quote during the visit, with a view to submitting a refined estimate or a firm quote at a later time when the supplier is not at the customer’s dwelling, that rough estimate will not be an offer; on that basis, the supplier will not fall within the definition of “domestic premises supplier”, unless the customer and the supplier, or the supplier’s representative, do reach an agreement during the visit; and
- (c) where an agreement is reached, the supplier will have sold, or agreed to sell, goods or contracted to supply services, and will therefore be a “domestic premises supplier”; this may be the case even if the agreement is subject to later specification of the price, the goods or the services.

It is immaterial whether the supplier carries on any *credit broking* (or other *regulated activity*) during the visit.

(4) In summary, the following *credit-related regulated activities* are relevant credit activities for the purposes of the *FCA Threshold Conditions*:

(a) *credit broking* when carried on:

...

(iii) in relation to a *consumer hire agreement* ~~where the goods being hired is a vehicle~~ or a *hire-purchase agreement*;

...

(b) *consumer credit lending* if carried on by a *local authority* or if:

...

(ii) no charge (by way of interest or otherwise) is payable by the borrower in connection with the provision of *credit* (this includes a charge payable in connection with a breach of the agreement or on the occurrence of a specified event; *consumer credit lending* under an agreement that contains such a charge is not a relevant credit activity); and

...

Annex C

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

16.12 Integrated Regulatory Reporting

...

Regulated Activity Group 12

...

16.12.29C R The applicable *data items*, reporting frequencies and submission deadlines referred to in SUP 16.12.4R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

Description of <i>data item</i>	<i>Data item</i> (note 1)	Frequency		Submission deadline
...				
Credit broking websites (note 10)	CCR008	Quarterly: <del>1</del> <u>January, 1 April, 1 July and 1 October</u> (note 11)	Quarterly: <del>1</del> <u>January, 1 April, 1 July and 1 October</u> (note 11)	30 <i>business days</i>
...				
<u>Note 11</u>	<u>Quarters end on 31 March, 30 June, 30 September and 31 December.</u>			

## Annex D

### Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text.

**Comes into force on 28 September 2015**

#### 1.2 Consumer awareness rules

...

Publishing and providing summary details, and information about the Financial Ombudsman Service

...

- 1.2.2 R Where the activity does not involve a sale, the obligation in *DISP* 1.2.1R(2)(b):
- (1) shall apply at, or immediately after, the point when contact is first made with an *eligible complainant*; and
  - (2) where the *respondent* is a *not-for-profit debt advice body*:
    - (a) may be met at, or immediately after, the point when contact is first made with an *eligible complainant*, by making an oral reference to the availability of the information if the *respondent* does not communicate with the *eligible complainant* in writing then; and
    - (b) must be met in writing on the first occasion on which the *respondent* communicates with the *eligible complainant* in writing.

## Annex E

### Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

#### Part 1: Comes into force on 28 September 2015

#### 7.6 Exercise of continuous payment authority

Recovery and continuous payment authorities etc

...

- 7.6.2A R (1) This rule applies where the terms of a regulated credit agreement or a P2P agreement do not provide for a continuous payment authority and it is proposed that a customer will grant a continuous payment authority to:
- (a) a lender or a person who has permission to carry on the activity of operating an electronic system in relation to lending; or
  - (b) a debt collector, provided that the debt collector is acting under an arrangement with the lender or the person who has permission to carry on the activity of operating an electronic system in relation to lending, the effect of which is that a payment by the customer to the debt collector amounts to a discharge or reduction of the debt due to the lender.
- (2) The firm which proposes the continuous payment authority to the customer must, before the customer grants the continuous payment authority:
- (a) explain why a continuous payment authority is proposed;
  - (b) provide the customer with an adequate explanation of the matters in CONC 4.6.2R(2);
  - (c) give the customer information, on paper or in another durable medium, setting out, in plain and intelligible language, the terms of the continuous payment authority and how it will operate; and
  - (d) give the customer a reasonable opportunity to consider the explanations required by (a) and (b) and the information required by (c).
- (3) A firm must not propose that a customer should grant a continuous



payment authority, and must not exercise rights under such an authority, in respect of repayments under a regulated credit agreement or a P2P agreement, the terms of which do not already provide for a continuous payment authority, unless:

- (a) the customer is in arrears or default in respect of the agreement; and
- (b) a lender or a person who has permission to carry on the activity of operating an electronic system in relation to lending, or a debt collector acting under an arrangement with the lender or the person, is exercising forbearance in respect of the customer in relation to the agreement.

- 7.6.2B    G    (1)    Where a regulated credit agreement or a P2P agreement does not incorporate the terms of a continuous payment authority, CONC 7.6.2AR enables a continuous payment authority to be put in place (for example, for a repayment plan) without necessarily requiring an amendment to the agreement. But CONC 7.6.2AR applies only where the customer is in arrears or default, and the creation of the continuous payment authority supports the fair treatment of the customer and facilitates the exercise of forbearance (see CONC 7.3.4R and CONC 7.3.5G).
- (2)    CONC 7.6.2AR also permits a continuous payment authority to be granted to a debt collector, provided that the debt collector is acting under an arrangement with a lender or a person who has permission to carry on the activity of operating an electronic system in relation to lending, such that a payment to the debt collector is treated as a payment to the lender, and the requirements of CONC 7.6.2AR(3) are met.
- (3)    CONC 7.6.2AR is subject to the rule in CONC 7.6.12R which restricts firms to two requests under a continuous payment authority for a sum due for high-cost short-term credit.
- (4)    Whether a forbearance that involves the creation of a continuous payment authority amounts to an agreement that varies or supplements a regulated credit agreement (rather than merely an indulgence to the customer) will depend on the circumstances. If there is an agreement that varies or supplements a regulated credit agreement, section 82(2) of the CCA requires it to be documented as a modifying agreement and CONC 4.6.3R applies instead of CONC 7.6.2AR. Firms should note the possibility that a P2P agreement may be a regulated credit agreement.

...

### **8.3 Pre-contract information and advice requirements**

...

- 8.3.4A    R    (1)    If a *firm* has not entered into a contract with a *customer*, and is satisfied on reasonable grounds that it is unlikely to do so, CONC 8.3.4R applies in relation to that *customer* as if the words “is provided in a *durable medium* and” were omitted.
- (2)    The *firm* must keep a record of the grounds in (1).

...

- 8.3.6A    G    (1)    *Firms* must provide advice in a *durable medium*, unless CONC 8.3.4AR applies. Where questions over the application of that exemption may arise, for example, in relation to advice given to a *customer* at an initial meeting or telephone call, the following considerations may be relevant:
- (a)    if a *firm* never charges for advice and never enters into contracts with *customers* for *debt solutions*, CONC 8.3.4AR may remove the requirement to provide advice to the *customer* in a *durable medium*; and
- (b)    if a *firm* enters into contracts with *customers* (in relation to advice, to a *debt solution*, or to some other matter), it will need to consider, at the early stages of contact with a *customer*, whether a contract with that *customer* may follow. A *firm* is only likely to be able to satisfy itself on that point once discussions with a *customer* have advanced to a stage where it is reasonable to conclude that it is more likely than not that the *firm* will not enter into a contract with the *customer*. The *firm* should keep a record of its reasons for being satisfied on the point.
- (2)    Where the exemption in CONC 8.3.4AR applies, the *firm* should consider whether it may nevertheless be appropriate to comply with CONC 8.3.4R in certain cases, for example where complex advice is given.

**Part 2:            Comes into force on 2 November 2015**

**2.2            General principles for credit-related regulated activities**

...

- 2.2.4    G    ...
- (3)    A *firm* which operates under a variety of trading names should take particular care to ensure that *customers* are not misled as to the identity of the *firm*, or the nature or scale of the *firm*'s business.

...

## 2.5 Conduct of business: credit broking

...

Unfair business practices: credit brokers

2.5.8 R A *firm* must not:

...

(2) other than where:

(a) ~~the *firm* has obtained the contact details of a *customer* (C) in the course of the sale or negotiations for the sale of a product or service to C; [deleted]~~

(b) ~~the direct marketing is in respect of the *firm's* similar products and services only; [deleted]~~

(c) ~~C has been given a simple means of refusing (free of charge, except for the cost of the transmission of the refusal) the use of the contact details for the purposes of such direct marketing, at the time that the details were initially collected and, where C did not initially refuse the use of the details, at the time of each subsequent communication; and [deleted]~~

(ca) (i) the *firm* has obtained the contact details of a *customer* (C) in the course of the sale or negotiations for the sale of a product or service to C;

(ii) the direct marketing is in respect of the *firm's* similar products and services only; and

(iii) C has been given a simple means of refusing (free of charge, except for the cost of the transmission of the refusal) the use of the contact details for the purposes of such direct marketing, at the time that the details were initially collected and, where C did not initially refuse the use of the details, at the time of each subsequent communication; or

(d)

...

...

(14) in relation to an insurance product or service (including, in particular, a payment protection product (the meaning of which is set out in CONC 2.5.10R)) or other product or service linked to the credit agreement or consumer hire agreement (whether the product or service is optional or required as a condition of the credit agreement or consumer hire agreement):

(a) pressurise the *customer* to buy the product or service; or

[**Note:** paragraph 2.62, 2nd bullet of *JGPPI*]

(b) offer undue incentives to the *customer* to buy the product or service; or

[**Note:** paragraph 2.62, 2nd bullet of *JGPPI*]

(c) discourage or prevent the *customer* from seeking or obtaining the product or service from another source;

[**Note:** paragraph 4.26f of *CBG*]

(15) ~~in relation to an insurance product or service or other linked product or service to the *credit agreement or consumer hire agreement* (whether the service or product is optional or required as a condition of the *credit agreement or consumer hire agreement*) discourage or prevent the *customer* from seeking or obtaining the product or service from another source; [deleted]~~

~~[**Note:** paragraph 4.26f of *CBG*]~~

...

(20) take a fee from a *customer's* bank payment account without the *customer's* express authorisation to do so (and "payment account" in this rule has the same meaning as in the *Payment Services Regulations*, being an account held in the name of one or more payment service users which is used for the execution of payment transactions);

[**Note:** paragraph 4.17c of *CBG*]

...

...

### **3 Financial promotions and communications with customers**

#### **3.1 Application**

...

3.1.4A G Firms are reminded that the rules and guidance in CONC 3.9 also apply to financial promotions and communications with a customer in relation to debt counselling and debt adjusting.

...

3.1.7 R (1) CONC 3 does not apply (apart from the provisions in (2)) to a financial promotion or communication that consists of only one or more of the following:

(a) the name or a trading name of the firm (or its appointed representative);

...

...

## 3.2 Financial promotion general guidance

...

### Meaning of “prominent”

3.2.3 G For the purposes of this chapter, information or a statement included in a financial promotion or communication will not be treated as prominent unless it is presented, in relation to the other content of the financial promotion or communication, in such a way that it is likely that the attention of the average customer to whom the financial promotion or communication is directed would be drawn to it.

## 3.3 The clear, fair and not misleading rule and general requirements

3.3.1 R (1) ...

(1A) A firm must ensure that each communication and each financial promotion:

(a) is clearly identifiable as such;

(b) is accurate;

(c) is balanced and, in particular, does not emphasise any potential benefits of a product or service without also giving a fair and prominent indication of any relevant risks;

(d) is sufficient for, and presented in a way that is likely to be

understood by, the average member of the group to which it is directed, or by which it is likely to be received; and

(e) does not disguise, omit, diminish or obscure important information, statements or warnings.

(1B) A firm must ensure that, where a communication or financial promotion contains a comparison or contrast, the comparison or contrast is presented in a fair and balanced way and is meaningful.

(2) If, for a particular communication or *financial promotion*, a firm takes reasonable steps to ensure it complies with (1), (1A) and (1B), a contravention does not give rise to a right of action under section 138D of the *Act*.

#### General requirements

3.3.2 R A firm must ensure that a communication or *financial promotion*:

...

(4) in the case of a communication or *financial promotion* in relation to *credit broking*, ~~indicates to the customer~~ specifies the identity name of the lender (where it is known).

[Note: paragraph 4.8a of *CBG*]

...

3.3.3 R (1) A firm must not in a *financial promotion* or a communication to a *customer* ~~suggest or state, expressly or by implication, state or imply~~ that *credit* is available regardless of the *customer's* financial circumstances or status.

[Note: paragraphs 3.7o of *CBG* and 5.2 of *ILG*]

(2) This rule does not apply to a financial promotion or communication relating to a credit agreement under which a person takes an article in pawn and the customer's total financial liability (including capital, interest and all other charges) is limited under the agreement to the proceeds of sale which would represent the true market value (within the meaning of section 121 of the *CCA*) of the article or articles pawned by the customer.

3.3.4 G ...

(2) ~~If credit is described as pre-approved, in accordance with CONC 3.5.12R the provision of the credit should be free of any conditions regarding the customer's credit status, and the lender or, in relation to a P2P agreement the operator of an electronic system in relation to lending, should have carried out the required assessment under CONC 5. A statement or an implication that credit is guaranteed or~~

pre-approved, or is not subject to any *credit* checks or other assessment of creditworthiness, may contravene CONC 3.3.3R. *Firms* are reminded of the requirements of CONC 5 (Responsible lending).

Guidance on clear, fair and not misleading

- 3.3.5 G ~~A firm should ensure that each communication and each *financial promotion*:~~
- ~~(1) is accurate and, in particular, should not emphasise any potential benefits of a product or service without also giving a fair and prominent indication of any relevant risks;~~
  - ~~(2) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received;~~
  - ~~(3) does not disguise, diminish or obscure important information, statements or warnings; and~~
  - ~~(4) is clearly identifiable as such. [deleted]~~

~~[Note: in relation to identifying marketing material as such, paragraphs 3.7p of CBG and 3.18q of DMG]~~

...

- 3.3.8 G ~~If a communication or a *financial promotion* compares a product or service with one or more other products (whether or not provided by the *firm*), the *firm* should ensure that the comparison is meaningful and presented in a fair and balanced way. A comparison or contrast to which CONC 3.3.1R(1B) applies may be a comparison or contrast with another *person*, or with another product or service, whether offered by the *firm* or by another *person*.~~

...

### 3.4 Risk warning for high-cost short-term credit

Risk warnings

- 3.4.1 R ...
- ~~(2) The risk warning in (1) must be included in a *financial promotion* contained in an *electronic communication* unless by reason of the limited space available on the medium in question it is not reasonably practicable to include the warning. [deleted]~~

...

...

### 3.5 Financial promotions about credit agreements not secured on land

...

#### Content of financial promotions

- 3.5.3 R (1) Where a *financial promotion* ~~includes~~ indicates a rate of interest or an amount relating to the *cost of credit* whether expressed as a sum of money or a proportion of a specified amount, the *financial promotion* must also:

...

...

#### Guidance on showing interest rates and cost of credit

- 3.5.4 G (1) A rate of interest for the purpose of *CONC* 3.5.3R(1) is not limited to an annual rate of interest but would include a *monthly* or daily rate or an *APR*. It would also include a reference to 0% credit. An amount relating to the *cost of credit* would include the amount of any fee or charge, or any *repayment of credit* (where it includes interest or other charges).

...

- (2) If a rule in *CONC* 3.5 applies to a rate of interest or a charge, and the rate or charge applies for only a limited period, the duration of the period and the rate or amount following that period, if known or ascertainable, should be shown.

[Note: paragraph 6.13 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]

#### Representative example

- 3.5.5 R ...

- (5) The information required by (1) must be:

- (a) specified in a clear, ~~and~~ concise and prominent way;

...

- (d) given ~~greater~~ no less prominence than:

...



...

Guidance on the representative example

3.5.6 G ...

(1A) Firms are referred to the *Glossary* definition of *representative APR* and reminded that they should consider the agreements which they reasonably expect to be entered into (whether by the *firm* or by another *person*) as a result of the *financial promotion*, and ensure that the 51% test in that definition takes account of the *APR* of each of those agreements. The representative example in *CONC 3.5.5R* should be representative of agreements to which the *representative APR* applies.

(1B) The example referred to in (1) is unlikely to be representative if, for example, most *customers* entering into agreements as a result of the *financial promotion* are likely to do so for a lower amount of *credit* than that indicated in the example, or with higher rates of interest or other charges than those indicated in the example.

...

(3) ~~If a rate of interest or a charge applies for only a limited period, the duration of the period and the rate or amount following that period, if known or ascertainable, should be shown. [deleted]~~

~~[Note: paragraph 6.13 of BIS Guidance on regulations implementing the *Consumer Credit Directive*]~~

...

(6) For showing the *cash price*, the total *cash price* of all items should be shown, together with the price of each item individually. For the purposes of the *Glossary* definition of *cash price* in this context, a discount will be treated as generally available if most *customers* paying in cash are likely to be, or would reasonably expect to be, offered or given the discount.

Other financial promotions requiring a representative APR

3.5.7 R (1) A *financial promotion* must include the *representative APR* if it:

(a) ~~indicates in any way, whether expressly or by implication, including by means of the name given to the business or the product or of an address used by a business for the purposes of electronic communication, that:~~ states or implies that *credit* is available to *individuals* who might otherwise consider their access to *credit* restricted; or

(i) ~~*credit* is available to persons who might otherwise~~

~~consider their access to *credit* restricted; or~~

- ~~(ii) any of the terms on which *credit* is available is more favourable (either for a limited period or generally) than corresponding terms applied in any other case or by any other *lender*; or~~
- ~~(iii) the way in which the *credit* is offered is more favourable (either for a limited period or generally) than corresponding ways used in any other case or by any other *lender*; or~~

~~[Note: regulation 6 of *CCAR 2010*]~~

- ~~(b) includes an incentive (including but not limited to gifts, special offers, discounts and rewards) to apply for *credit* or to enter into an agreement under which *credit* is provided; includes a favourable comparison relating to the *credit*, whether express or implied, with another *person*, product or service; or~~
- ~~(c) includes an incentive (in the form of a statement about the speed or ease of processing, considering or granting an application, or of making funds available) to apply for *credit* or to enter into an agreement under which *credit* is provided.~~

~~[Note: regulation 6 of *CCAR 2010*]~~

- ~~(2) The *representative APR* must be given greater no less prominence than any ~~indication or incentive~~ of the matters in (1).~~

~~...~~

- 3.5.8 G
- (1) A firm's trading name, website address or logo could trigger the requirements in *CONC 3.5.7R(1)*.
  - (2) For the purposes of *CONC 3.5.7R(1)(b)*, a comparison with another *person*, product or service includes a reference (whether stated or implied) to:
    - (a) the terms on which, or the way in which, *credit* is offered or made available; or
    - (b) the nature or quality or any other aspect of the service relating to the *credit* that the *person* offers or provides (or does not offer or provide).

The *financial promotion* does not need to specify a particular *person*, product or service for there to be a comparison.

- (3) A *financial promotion* does not necessarily include a comparison where it merely refers to a *person*, product or service in a factual

manner, but there will be an implied comparison for the purposes of CONC 3.5.7R(1)(b) if it may reasonably be inferred that a comparison is being made.

- (4) ~~Whether or not a reference to speed or ease in CONC 3.5.7R(1)(c) constitutes an incentive to apply for *credit* or enter into an agreement under which *credit* is provided would depend upon the circumstances, including whether~~ A statement about matters such as the speed or ease of processing, considering or granting an application, of entering into an agreement, or of making funds available, may constitute an incentive for the purposes of CONC 3.5.7R(1)(c). This will depend on the context of the statement and the circumstances in which it is made. A statement will be an incentive where it is likely to persuade or influence a *customer* to take those steps or is merely a factual statement about the product or service apply for *credit* or to enter into an agreement under which *credit* is provided, or is presented in a way which is likely to have that effect.
- (5) Other examples of things which could be incentives are gifts, special offers, discounts and rewards.

...

#### Ancillary services

- 3.5.10 R (1) ~~A *financial promotion* must include a clear, and concise and prominent statement in respect of any obligation to enter into a contract for an *ancillary service* where:~~
- ...
- (2) ~~The statement in (1) must be presented together with any *representative APR* included in the *financial promotion*;~~
- (a) ~~be no less prominent than any information in CONC 3.5.5R(1) included in the *financial promotion*; and~~
- (b) ~~be presented together with any *representative APR* included in the *financial promotion*.~~

...

...

#### Restricted expressions

- 3.5.12 R (1) ~~A *financial promotion* must not include:~~
- ...
- (c) ~~...; or~~

- (d) ~~the expression "loan guaranteed", "pre-approved" or "no credit checks" or any similar expression, except where the agreement is free of any conditions regarding the credit status of the customer; or [deleted];~~

...

...

### 3.6 Financial promotions about credit agreements secured on land

...

Statements in relation to security

3.6.5 R ...

- (2) Where, in the case of a *financial promotion*, the *security* comprises or may comprise a mortgage or charge on ~~the customer's home a~~ property used by the customer as a dwelling (whether or not the customer's primary residence):

...

...

Annual percentage rate of charge

3.6.6 R ...

- (6) In the case of a *financial promotion* relating to a *borrower-lender agreement* enabling the *customer* to overdraw on a current account under which the *lender* is the Bank of England or an ~~authorised person~~ authorised person with ~~permission~~ permission to accept deposits, there may be substituted for the *typical APR* a reference to the statement of:

...

...

Information ~~required~~ that CONC 3.6.4R(1) may require to be included in a financial promotion

3.6.10 R ...

...

### 3.8 Financial promotions and communications: lenders

...

3.8.2 R A *firm* must not, in a *financial promotion* or a communication with a *customer*:

...

- (2) ~~suggest or state, expressly or by implication, state or imply~~ that providing *credit* is dependent solely upon the value of the equity in property on which the agreement is to be secured; or

...

...

### 3.9 Financial promotions and communications: debt counsellors and debt adjusters

...

3.9.4A G Firms are reminded of:

- (1) the guidance in CONC 3.3.10G(6) to (8) in relation to debt solutions; and

- (2) the rule in CONC 8.2.4R which requires firms to notify the customer that free debt counselling, debt adjusting and providing of credit information services is available and that the customer can find out more by contacting the Money Advice Service.

3.9.5 R A *financial promotion* or a communication with a *customer* by a *firm* must not:

...

- (2) falsely claim or imply in any way that the *firm* is, or represents, a charitable or *not-for-profit body* or government or local government organisation;

...

3.9.7 R A *firm* must not:

- (1) unless it is a *not-for-profit debt advice body* or a ~~person~~ person who will provide such services, operate a look alike website designed to attract *customers* seeking free, charitable, not-for-profit or governmental or local governmental debt advice; or

...

### 3.10 Financial promotions not in writing

...

#### 3.10.3 G Firms are reminded that:

- (1) section 49 of the CCA makes it a criminal offence to canvass borrower-lender agreements, for example cash loans, off trade premises (within the meaning of section 48 of the CCA); and
- (2) section 154 of the CCA makes it a criminal offence to canvass off trade premises credit broking of a kind specified by article 36A(1)(a) to (c) of the Regulated Activities Order, debt adjusting, debt counselling or providing credit information services (within the meaning of section 153 of the CCA).

...

## 4 Pre-contractual requirements

### 4.1 Content of quotations

...

#### 4.1.6 G For the purposes of CONC 4.1.5R(3)(c), a statement included in a quotation will not be treated as prominent unless it is presented, in relation to the other content of the quotation, in such a way that it is likely that the attention of the average customer to whom such a quotation is addressed would be drawn to it.

### 4.2 Pre-contract disclosure and adequate explanations

...

#### 4.2.5 R ...

- (6) Where the *regulated credit agreement* is an agreement under which a ~~person~~ person takes an article in pawn:

...

...

...

- 4.2.7 G In deciding on the level and extent of explanation required by *CONC* 4.2.5R, the *lender* or *credit broker* should consider (and each of them should ensure that anyone acting on its behalf should consider), to the extent appropriate to do so, factors including:
- (1) the type of *credit* being sought;
  - (2) the amount and duration of *credit* to be provided;
  - (2A) the actual and potential costs of the *credit*;
  - (2B) ~~and the associated cost and~~ the risk to the *customer* arising from the *credit* (the risk to the *customer* is likely to be greater the higher the total cost of the *credit* relative to the *customer's* financial situation);
  - (2C) the purpose of the *credit*, if the *lender* or (as the case may be) the *credit broker* knows what that purpose is;
  - (3) to the extent it is evident and discernible, the *customer's* level of understanding of the agreement, and of the information and the explanation provided about the agreement;
- ...

- 4.2.7A G (1) *CONC* 4.2.5R(1) requires the *customer* to be provided with an adequate explanation of the matters in *CONC* 4.2.5R(2). Where there is more than one *customer* acting together as ‘joint borrowers’, the *lender* or *credit broker* should consider whether it may be appropriate to give separate explanations to each *customer* and whether the explanation should be the same or different for each, rather than giving a single explanation to all of them jointly. (Where the *borrower* is a *partnership* or an unincorporated association, the members or *partners* may be treated as a single *customer*.)
- (2) In deciding whether it is appropriate to give separate explanations to each *customer*, and in determining the level and extent of explanation required for each *customer*, the *lender* or *credit broker* should consider the factors in *CONC* 4.2.7G separately for each *customer*.
- (3) However, *CONC* 4.2.5R(4) does not require an oral explanation of the matters in *CONC* 4.2.5R(2)(c) and (d) to be given to one *customer* simply because an oral explanation of the matters in *CONC* 4.2.5R(2)(a), (b) or (e) was given to a different *customer*.
- ...

Credit agreements where there is a guarantor etc

- 4.2.22 R (1) This rule applies if:

- (a) a firm is to enter into a regulated credit agreement; and
    - (b) an individual other than the borrower (in this rule referred to as “the guarantor”) is to provide a guarantee or an indemnity (or both) in relation to the regulated credit agreement.
  - (2) The firm must, before making the regulated credit agreement, provide the guarantor with an adequate explanation of the matters in (3) in order to place the guarantor in a position to make an informed decision as to whether to act as the guarantor in relation to the regulated credit agreement.
  - (3) The matters are:
    - (a) the circumstances in which the guarantee or the indemnity (or both) might be called on; and
    - (b) the implications for the guarantor of the guarantee or the indemnity (or both) being called on.
  - (4) For the purposes of (2), the rules and guidance listed in (5) apply as if:
    - (a) references to the customer were references to the guarantor; and
    - (b) references to CONC 4.2.5R were references to this rule.
  - (5) The rules and guidance are:
    - (a) CONC 4.2.6G to CONC 4.2.7AG;
    - (b) CONC 4.2.9R and CONC 4.2.10R;
    - (c) CONC 4.2.12R to CONC 4.2.14G; and
    - (d) CONC 4.2.16G to CONC 4.2.21G.
  - (6) For the purposes of this rule, a guarantee does not include a legal or equitable mortgage or a pledge.
- 4.2.23 R (1) CONC 4.2.22R does not apply to a lender if a credit broker, a solicitor, a barrister, (in Scotland) an advocate, or a relevant person has complied with that rule in respect of the agreement.
- (2) Before a lender concludes that CONC 4.2.22R does not apply to it in relation to a regulated credit agreement by virtue of (1), the lender must take reasonable steps to satisfy itself that:
    - (a) an explanation complying with CONC 4.2.22R(2) has been provided to the guarantor; and



- (b) the following had been provided to the *person* giving the explanation, before the explanation was given:
  - (i) a copy of the agreement;
  - (ii) if the *guarantee* or the *indemnity* (or both) is contained in a document other than the agreement, a copy of that document; and
  - (iii) a copy of any other document or information in writing relating to the agreement which had been provided to the guarantor by the *lender* or the *credit broker*.

(3) In this rule, “relevant person” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act), and is not a solicitor, a barrister or (in Scotland) an advocate.

4.2.24 G CONC 4.2.23R permits the explanation required by CONC 4.2.22R to be given by a *credit broker*. It also permits the explanation to be given by a solicitor, a barrister, a Scottish advocate or another “relevant person” (for example, in the course of giving independent legal advice to the guarantor). The explanation may only be given by such a *person* if the information and documents listed in that rule had been provided to that *person*.

### 4.3 Adequate explanations: P2P agreements

...

Adequate explanations

...

4.3.7 G For the purposes of CONC 4.3.6R, a warning will not be treated as prominent unless it is presented in such a way that it is likely that the attention of the average *customer* would be drawn to it.

P2P agreements where there is a guarantor etc

4.3.8 R (1) This rule applies if:

- (a) a *firm* with *permission* to carry on the activity of *operating an electronic system in relation to lending* is to facilitate the entry into a *P2P agreement*;
- (b) the prospective *borrower* is an *individual*; and

- (c) an individual other than the borrower (in this rule referred to as “the guarantor”) is to provide a guarantee or an indemnity (or both) in relation to the P2P agreement.
- (2) The firm must, before the P2P agreement is made, provide the guarantor with an adequate explanation of the matters in (3) in order to place the guarantor in a position to make an informed decision as to whether to act as the guarantor in relation to the P2P agreement.
- (3) The matters are:
  - (a) the circumstances in which the guarantee or the indemnity (or both) might be called on; and
  - (b) the implications for the guarantor of the guarantee or the indemnity (or both) being called on.
- (4) For the purposes of (2), the rules and guidance listed in (5) apply as if:
  - (a) references to the customer were references to the guarantor;
  - (b) references to CONC 4.2.5R were references to this rule; and
  - (c) references to the regulated credit agreement were references to the P2P agreement.
- (5) The rules and guidance are:
  - (a) CONC 4.2.6G to CONC 4.2.7AG;
  - (b) CONC 4.2.9R and CONC 4.2.10R;
  - (c) CONC 4.2.12R to CONC 4.2.14G; and
  - (d) CONC 4.2.16G to CONC 4.2.21G.
- (6) For the purposes of this rule, a guarantee does not include a legal or equitable mortgage or a pledge.

...

#### **4.6 Pre-contract disclosure: continuous payment authorities**

...

- 4.6.3 R A firm must include the terms of the continuous payment authority, in plain and intelligible language, as part of the credit agreement or consumer hire agreement presented to the customer or P2P agreement presented to the borrower.

[**Note:** paragraph 3.9miii of DCG]

- 4.6.4 R ~~A *firm* must set out, in plain and intelligible language, the scope of the agreed *continuous payment authority* and how it will operate. [deleted]~~

~~[**Note:** paragraph 3.9miii of DCG]~~

Agreements where there is a guarantor etc

- 4.6.5 R (1) This rule applies if:
- (a) a *firm* is to enter into a *regulated credit agreement* or a *regulated consumer hire agreement*, or is to facilitate the entry into a *P2P agreement*;
  - (b) an *individual* other than the *borrower* or the *hirer* (in this rule referred to as “the guarantor”) is to provide a *guarantee* or an *indemnity* (or both) in relation to the *regulated credit agreement*, the *regulated consumer hire agreement* or the *P2P agreement*; and
  - (c) the guarantor is to grant a *continuous payment authority*.
- (2) The *firm* must, before the guarantor provides the *guarantee* or the *indemnity*, provide the guarantor with an adequate explanation of the matters in CONC 4.6.2R(2).
- (3) For the purposes of (2), CONC 4.6.2R(2) applies as if references to the *customer* were references to the guarantor.
- (4) The *firm* must include the terms of the *continuous payment authority*, in plain and intelligible language, in the document that includes the *guarantee* or the *indemnity* (or both).
- (5) For the purposes of this rule, a *guarantee* does not include a *legal or equitable mortgage* or a *pledge*.

...

## 5.2 Creditworthiness assessment: before agreement

...

Proportionality of assessments

- 5.2.4 G ...

(3A) Where the *customer* is borrowing for the purposes of a business, it may be reasonable to have regard to the *customer's* business plan for the purposes of an assessment required by CONC 5.2.1R or CONC

5.2.2R, but the assessment should not be based solely on that business plan.

- (3B) Where there is more than one *customer* acting together as ‘joint borrowers’, the *lender* should consider whether it may be appropriate to assess each *customer* in accordance with *CONC 5.2.1R* or *CONC 5.2.2R* separately (as well as collectively), having regard to the risk to that *customer* arising from the *credit* being sought were the *customer* to be treated as being solely responsible for obligations of the joint borrowers under the agreement. (Where the *borrower* is a *partnership* or an unincorporated association, the members or partners may be treated as a single *customer*.)

...

Creditworthiness assessment where there is a guarantor etc

- 5.2.5     R     (1)     This rule applies if, in relation to a regulated credit agreement:
- (a)     an individual other than the borrower (in this rule referred to as “the guarantor”) is to provide a guarantee or an indemnity (or both); and
- (b)     the lender is required to undertake an assessment of the customer under *CONC 5.2.1R* or *CONC 5.2.2R*.
- (2)     Before entering into the regulated credit agreement, the lender must undertake an assessment of the potential for the guarantor’s commitments in respect of the regulated credit agreement to adversely impact the guarantor’s financial situation.
- (3)     A firm must consider sufficient information to enable it to make a reasonable assessment under this rule, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made.
- (4)     For the purposes of (2), *CONC 5.2.3G*, *CONC 5.2.4G* and *CONC 5.3.1G* to *CONC 5.3.8G* apply as if:
- (a)     references to the customer were references to the guarantor; and
- (b)     references to *CONC 5.2.2R*(1) were references to *CONC 5.2.5R*(2).
- (5)     For the purposes of this rule, a guarantee does not include a legal or equitable mortgage or a pledge.
- 5.2.6     G     (1)     The assessment of the guarantor does not need to be identical to the assessment undertaken in respect of the borrower, but should be sufficient in depth and scope having regard to the potential

obligations which might fall on the guarantor.

- (2) The provision of the guarantee or indemnity (or both), and the assessment of the guarantor under CONC 5.2.5R, does not remove or reduce the obligation on the lender to carry out an assessment of the borrower under CONC 5.2.1R or CONC 5.2.2R. Firms are reminded of the rule in CONC 5.3.4R that the assessment of the borrower must not be based primarily or solely on the value of any security provided by the borrower.

...

## 5.5 Creditworthiness assessment: P2P agreements

...

Creditworthiness assessment where there is a guarantor etc

- 5.5.7 R (1) This rule applies if, in relation to a P2P agreement:
- (a) the prospective borrower is an individual;
  - (b) an individual other than the borrower (in this rule referred to as “the guarantor”) is to provide a guarantee or an indemnity (or both); and
  - (c) the firm is required to undertake an assessment of the prospective borrower under CONC 5.5.3R.
- (2) Before the P2P agreement is made, the firm must undertake an assessment of the potential for the guarantor’s commitments in respect of the P2P agreement to adversely impact the guarantor’s financial situation.
- (3) A firm must consider sufficient information to enable it to make a reasonable assessment under this rule, taking into account the information of which the firm is aware at the time the P2P agreement is to be made.
- (4) For the purposes of (2), CONC 5.2.3G, CONC 5.2.4G and CONC 5.3.1G to CONC 5.3.8G apply as if:
- (a) references to the customer were references to the guarantor;
  - (b) references to CONC 5.2.2R(1) were references to CONC 5.5.7R(2); and
  - (c) references to the regulated credit agreement were references to the P2P agreement.

(5) For the purposes of this rule, a guarantee does not include a legal or equitable mortgage or a pledge.

- 5.5.8 G (1) The assessment of the guarantor does not need to be identical to the assessment undertaken in respect of the borrower, but should be sufficient in depth and scope having regard to the potential obligations which might fall on the guarantor.
- (2) The provision of the guarantee or indemnity (or both), and the assessment of the guarantor under CONC 5.5.7R, does not remove or reduce the obligation on the firm to carry out an assessment of the borrower under CONC 5.5.3R. Firms are reminded of the rule in CONC 5.3.4R that the assessment of the borrower must not be based primarily or solely on the value of any security provided by the borrower.

...

## 6.2 Assessment of creditworthiness: during agreement

...

- 6.2.1A R (1) This rule applies if, in relation to a regulated credit agreement:
- (a) an individual other than the borrower (in this rule referred to as “the guarantor”) has provided a guarantee or an indemnity (or both); and
- (b) the lender is required to undertake an assessment of the customer under CONC 6.2.1R.
- (2) Before doing either of the things mentioned in (1), the lender must undertake an assessment of the potential for the guarantor’s commitments in respect of the regulated credit agreement to adversely impact the guarantor’s financial situation.
- (3) For the purposes of this rule, a guarantee does not include a legal or equitable mortgage or a pledge.

6.2.2 R Where CONC 6.2.1R or CONC 6.2.1AR applies to a firm:

...

- (2) the rules in CONC 5.3 referred to in (1) apply with the modifications necessary to take into account that CONC 6.2.1R concerns increases in the amount of credit and in credit limits and when the increase is to take place; ~~and~~
- (3) the guidance in CONC 5.3 applies accordingly and CONC 5.2.3G and CONC 5.3.4R apply treating them as guidance on CONC 6.2.1R

or, as the case may be, on CONC 6.2.1AR; and

- (4) for the purposes of CONC 6.2.1AR, the rules specified in (1), as modified by (2), and the guidance specified in (3) apply as if references to the customer were references to the guarantor.

6.2.3 R A firm must consider sufficient information available to it at the time of the increase referred to in CONC 6.2.1R to enable it to make a reasonable assessment required by that rule or CONC 6.2.1AR. The provision of the guarantee or indemnity (or both), and the assessment of the guarantor, does not remove or reduce the obligation on the firm to carry out an assessment of the borrower under CONC 6.2.1R. Firms are reminded of the rule in CONC 5.3.4R that the assessment of the borrower must not be based primarily or solely on the value of any security provided by the borrower.

...

## 6.7 Post contract: business practices

...

Continuous payment authorities: post agreement obligations

...

- 6.7.25A R (1) Paragraph (2) applies if an individual other than the borrower (in this rule referred to as “the guarantor”) has:
- (a) provided a guarantee or an indemnity (or both) in relation to:
    - (i) a regulated credit agreement; or
    - (ii) a P2P agreement in respect of which the borrower is an individual; and
  - (b) granted a continuous payment authority.
- (2) CONC 6.7.24R and CONC 6.7.25R apply in respect of the guarantor as if references to the customer were references to the guarantor.
- (3) For the purposes of this rule, a guarantee does not include a legal or equitable mortgage or a pledge.

...

## 6.8 Post contract business practices: credit brokers

...

Refunds of brokers' fees

...

- 6.8.4 R Where section 155 of the *CCA* applies, a *firm* must respond promptly to a request for a refund; this includes making payment of the refund promptly if a refund is payable.

...

- 6.8.5 G ...
- (2) A *firm* should respond promptly to a request for a refund. *Firms* are reminded of the *rule* in *CONC* 11.1.12R to return sums without undue delay, and within 30 calendar days, on cancellation of a *distance contract*.

...

## 7 Arrears, default and recovery (including repossessions)

### 7.1 Application

...

#### Agreements where there is a guarantor etc

- 7.1.4 R (1) In this chapter, except for *CONC* 7.6.15AG:
- (a) a reference to a *borrower*, a *customer* or a *hirer* includes a reference to an *individual* other than the *borrower* or the *hirer* (in this chapter, referred to as “the guarantor”) who has provided a guarantee or an indemnity (or both) in relation to:
- (i) a *regulated credit agreement*; or
- (ii) a *regulated consumer hire agreement*; or
- (iii) a *P2P agreement* in respect of which the *borrower* is an *individual*;
- where it would not do so but for this *rule*;
- (b) a reference (other than in this *rule*) to a *credit agreement*, a *consumer hire agreement* or a *P2P agreement* includes a reference to the document that includes the guarantee or the indemnity (or both);
- (c) a reference to a *repayment* includes a reference to a payment due under the guarantee or under the indemnity;



(d) a reference to paying or repaying the debt includes a reference to making (in whole or in part) a payment due under the guarantee or under the indemnity; and

(e) a reference to the adequate explanation required by *CONC 4.6.2R* includes a reference to the adequate explanation required by *CONC 4.6.5R*.

(2) For the purposes of this rule, a guarantee does not include a *legal or equitable mortgage* or a *pledge*.

(3) This rule does not apply to *CONC 7.3.1G*, *CONC 7.4.1R*, *CONC 7.4.2R*, *CONC 7.5.1G*, *CONC 7.6.2AR*, *CONC 7.6.2BG*, *CONC 7.15.3G*, *CONC 7.15.4R*, *CONC 7.15.5G*, or *CONC 7.17* to *CONC 7.19*.

7.1.5 G In relation to *CONC 7.1.4(1)(a)*, firms are reminded that the definitions of *customer* and *borrower* include, in relation to *debt collecting* and *debt administration*, a *person providing a guarantee or indemnity under the agreement*. (See *CONC 7.3.1G(2)*.)

...

### **7.3 Treatment of customers in default or arrears (including repossessions): lenders, owners and debt collectors**

...

Forbearance and due consideration

...

7.3.7 G ~~Where appropriate, a firm should direct a customer in default or in arrears difficulties to sources of free and independent debt advice. [deleted]~~

7.3.7A G (1) If a customer is in default or in arrears difficulties, the firm should, where appropriate:

(a) inform the customer that free and impartial debt advice is available from not-for-profit debt advice bodies; and

(b) refer the customer to a not-for-profit debt advice body.

(2) A firm may refer the customer to a not-for-profit debt advice body by, for example, providing the customer with a copy of the current arrears information sheet under section 86 of the CCA, or with the name and contact details of a not-for-profit debt advice body or the Money Advice Service; or directly transferring the customer's call to a not-for-profit debt advice body.

- (3) In addition, the *firm* may provide the *customer* with the name and contact details of another *authorised person* who has *permission* for *debt counselling*, provided that to do so is consistent with the *firm's* obligations under the *regulatory system*.

...

## 7.6 Exercise of continuous payment authority

...

Continuous payment authorities and high-cost short-term credit: instalment payments

...

7.6.15A G (1) Paragraph (2) applies where a guarantor has provided a guarantee or an indemnity (or both) in respect of *high-cost short-term credit*. (See *CONC 7.1.4R* for the meanings of “guarantor” and “guarantee”).

- (2) *CONC 7.6.12R* and *CONC 7.6.13R* apply to a *continuous payment authority* granted by the borrower and to a *continuous payment authority* granted by a guarantor separately. This means that the *firm* may make up to two requests for payment under a *continuous payment authority* granted by the borrower and, if those requests are unsuccessful, up to two requests for payment under a *continuous payment authority* granted by the guarantor.

...

## 7.13 Data accuracy and outsources activities

...

7.13.3 R A *firm* must endeavour to ensure that the information it passes on to its agent or to a *debt collector* or to a tracing agent (a ~~person~~ *person* that carries on the activity in article 54 of the *Exemption Order*), whether for the *firm's* or another ~~person's~~ *person's* business, ...

...

## 7.14 Settlements, disputed and deadlocked debt

...

7.14.10 R If a *firm* rejects a repayment offer because it is unacceptable, the *firm* must

not engage in any conduct intended to, or likely to, have the effect of intimidating the ~~customer~~ customer into increasing the offer.

...

## 7.17 Notice of sums in arrears under P2P agreements for fixed-sum credit

...

Notice of sums in arrears for fixed-sum credit

...

7.17.5 R ...

(4) A *firm* must accompany the notice required by *CONC* 7.17.4R with a copy of the current arrears information sheet under section 86A of the *CCA* with the following modifications:

(-a) for the heading “Arrears” substitute “Arrears – peer-to-peer lending”;

...

...

...

## 7.18 Notice of sums in arrears under P2P agreements for running-account credit

...

7.18.3 R ...

(2) A *firm* must accompany the notice required by (1) with a copy of the current arrears information sheet under section 86A of the *CCA* with the following modifications:

(-a) for the heading “Arrears” substitute “Arrears – peer-to-peer lending”;

...

...

## 8.2 Conduct standards: debt advice

Overarching principles

...

8.2.2 G ...

- (2) Recommending a *debt solution* which a *firm* knows, believes or ought to suspect is unaffordable for the *customer* is likely to contravene *Principle 2, Principle 6* and *Principle 9* and may contravene other *Principles*. The *firm* should also take into account the expected term of the proposed *debt solution*, having regard to the *Principles*.

...

Signposting to sources of free debt counselling, etc

8.2.4 R A *debt management firm* must prominently include:

- (1) in its first written or oral communication with the *customer* a statement that free *debt counselling, debt adjusting* and *providing of credit information services* is available to *customers* and that the *customer* can find out more by contacting the ~~Money Advice Service~~ *Money Advice Service*; and
- (2) on its web-site the following link to the ~~Money Advice Service~~ *Money Advice Service* web-site...

...

CONC 9 (Credit reference agencies) is deleted in its entirety. The deleted text is not shown.

Amend the following as shown.

**12 Requirements for firms with interim permission for credit-related regulated activities**

...

12.1.4 R Table: Disapplication or modified modules or provisions of the Handbook

Module	Disapplication or modification
...	
Supervision manual	...
	<i>SUP 6</i> (Applications to vary and cancel Part 4A permission)

(SUP)	and to impose, vary or cancel requirements) applies:
	...
	(2) with the modifications to <del>SUP</del> <u>SUP</u> 6.3.15D and <del>SUP</del> <u>SUP</u> 6.4.5D set out in paragraph 1.2 of this Schedule.
	...
...	

...

**13 Guidance on the duty to give information under sections 77, 78 and 79 of the Consumer Credit Act 1974**

...

Failure to comply

13.1.6 G ...

- (4) The *firm* should, in any ~~communication or~~ request for payment or communication relating to a payment (other than a statement issued in accordance with the CCA or regulations made under it which does not constitute or contain a request for payment) in such cases, make clear to the *customer* that although the debt remains outstanding it is unenforceable.

...

**Appendix 1 Total charge for credit rules**

...

**App 1.2 Total charge for credit rules for other agreements**

...

Total charge for credit

...

App 1.2.3 R ...

- (2) Subject to (3), the following costs shall be included in the *total cost of credit to the borrower*:

(-a) any fee or charge payable by the borrower to a credit broker in connection with the agreement (if the fee or charge is known to the lender);

...

...

(7) The total cost of credit to the borrower must not take account of any discount, reward (including 'cash back') or other benefit to which the borrower might be entitled, whether such an entitlement is subject to conditions or otherwise.

Total cost of credit

App 1.2.3A G The total cost of credit to the borrower includes fee or charge payable by the borrower to a credit broker, if the fee or charge is known to the lender. CONC 4.4.2R(3) requires the credit broker to disclose their fee to the lender. Lenders should take reasonable steps to ascertain whether a fee is payable to the credit broker and, if so, the amount of the fee.

...

**App 1.4 Exemption for high net worth borrowers and hirers and exemption relating to businesses**

...

App 1.4.4 R A ~~person~~ person who is:

...

...

**Transitional Provisions and Schedules**

After CONC TP 6 insert the following new transitional provisions. The text is not underlined.

**TP 7 Transitional provision in relation to the Consumer Credit (Amendment No 2) Instrument 2015**

(1)	(2)	(3)	(4)	(5)	(6)
-----	-----	-----	-----	-----	-----

	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
7.1	<i>CONC</i>	R	The Consumer Credit (Amendment No. 2) Instrument 2015 does not have effect in relation to <i>credit agreements</i> secured on <i>land</i> , or to <i>credit broking</i> in relation to such agreements, except in so far as it amends <i>CONC</i> 3.6.	From 28 September 2015 to 21 March 2016	28 September 2015

...

### Schedule 1 Record keeping requirements

...

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
7.13.7R	...			
8.3.4AR(2)	<u>The grounds for being satisfied that the <i>firm</i> is unlikely to enter into a contract with a <i>customer</i>.</u>	<u>The grounds for being satisfied that the <i>firm</i> is unlikely to enter into a contract with a <i>customer</i>.</u>	<u>When the <i>firm</i> becomes satisfied that it is unlikely to enter into a contract with the <i>customer</i>.</u>	<u>Not specified.</u>
...				

## Annex F

### Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

**Comes into force on 28 September 2015**

## 2 Authorisation and regulated activities

...

### 2.3 The business element

...

#### 2.3.2 G ...

- (4) The business element for all other *regulated activities* is that the activities are carried on by way of business. This applies to the activities of *effecting or carrying out contracts of insurance*, certain activities relating to the Lloyd's market, *entering as provider into a funeral plan contract, entering into a home finance transaction or administering a home finance transaction, operating a dormant account fund, credit-related regulated activities (subject to the modification for not-for-profit bodies in (3B)) and operating an electronic system in relation to lending* ~~carried on by persons other than not-for-profit bodies.~~

...

### 2.7 Activities: a broad outline

...

Exempt agreements

- 2.7.19B G A *credit agreement* is not a *regulated credit agreement* for the purposes of *PERG 2.7.19AG* if it is an exempt agreement. *PERG 2.7.19CG* to *PERG 2.7.19JG* describe the categories of exempt agreement. Where part of a credit agreement falls within the exemptions in articles 60C to 60H of the Regulated Activities Order, only that part of the agreement is an exempt agreement.

...

Exemptions relating to number of repayments to be made



2.7.19G G A *credit agreement* is also an exempt agreement in the following cases:

(1) if (subject to *PERG 2.7.19HG*):

...

(b) the number of payments to be made by the borrower is not more than ~~four~~ 12;

...

...

(5) ...

For the purposes of (1) to (5), “payment” means any payment which comprises or includes a *repayment*, a payment of interest or any other charge which forms part of the *total charge for credit*.

...

Exemptions relating to the total charge for credit

2.7.19I G A *credit agreement* is also an exempt agreement in the following cases:

...

(6) unless the agreement:

...

(b) is offered by a *lender* ~~who is an employer~~ to a *borrower* as an incident of employment with the ~~lender~~ *lender*, or with an *undertaking* in the same *group* as the *lender*;

...

...

## 2.8 Exclusions applicable to particular regulated activities

...

Credit broking

2.8.6C G The following activities are excluded from the *regulated activity* of *credit broking*:

...

Activities carried on by members of the legal profession

(6) Activities carried on by:

...

- (b) a solicitor acting in the course of ~~contentious business~~ providing advocacy services or litigation services;
- (c) a *person* acting in the course of ~~contentious business~~ providing advocacy services or litigation services who, for the purposes of the Legal Services Act 2007, is authorised to exercise a right of audience or conduct litigation;

are excluded from *credit broking*. For these purposes: ~~business done in, or for the purposes of, proceedings begun before a court or before an arbitrator, not being non-contentious or common form probate business, is contentious business~~

(d) “advocacy services” means any service which it would be reasonable to expect a *person* who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings; and

(e) “litigation services” means any service which it would be reasonable to expect a *person* who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings.

...

Debt adjusting, debt counselling, debt collecting and debt administration

2.8.7C G ...

(5) Activities carried on by:

...

- (b) a solicitor acting in the course of ~~contentious business~~ providing advocacy services or litigation services;
- (c) a *person* acting in the course of ~~contentious business~~ providing advocacy services or litigation services who, for the purposes of the Legal Services Act 2007, is authorised to exercise a right of audience or conduct litigation;

are excluded from *debt adjusting, debt counselling, debt collecting*

and *debt administration*. For these purposes; ~~contentious business means business done in, or for the purposes of, proceedings begun before a court or before an arbitrator, not being non-contentious or common form probate business~~

(d) “advocacy services” means any service which it would be reasonable to expect a *person* who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings; and

(e) “litigation services” means any service which it would be reasonable to expect a *person* who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings.

...

## 2.11 Persons who are exempt for credit-related regulated activities

...

### Charities

2.11.6 G The exemption from *operating an electronic system in relation to lending* in paragraph 44(A1) of the Schedule to the *Exemption Order* applies to a charity (as defined in article 3 to the *Exemption Order*) which carries on that activity in relation to an article 36H agreement (see *PERG 2.7.7HG(4)*). For the exemption to apply, the only amount payable to the *lender* under, or in connection with, the agreement must be the amount of *credit* provided; no interest or other charges may be added.

### Process servers

2.11.7 G (1) Under paragraph 54A(1) of the Schedule to the *Exemption Order*, a *person* who serves, or takes steps to serve, a document on a *borrower* or a *hirer* for the purposes of legal proceedings, including arbitration and insolvency proceedings, brought or to be brought for the payment of a debt due under a *credit agreement*, a *P2P agreement* or a *consumer hire agreement* is exempted from *debt collecting*, as long as the *person*:

(a) is not the *lender* or *owner* under the agreement; and

(b) does not take any other steps to procure the payment of the debt or any other debt due from the *borrower* or the *hirer*

under the agreement.

- (2) Under paragraph 54A(2) of the Schedule to the *Exemption Order*, a *person* who serves, or takes steps to serve, a document on a *borrower* or a *hirer* for the purposes of legal proceedings, including arbitration and insolvency proceedings, brought or to be brought for the exercise or enforcement of rights under a *credit agreement*, a *P2P agreement* or a *consumer hire agreement* is exempted from *debt administration*, as long as the *person*:
- (a) is not the *lender* or *owner* under the agreement;
  - (b) does not take any other steps to exercise or enforce rights under the agreement; and
  - (c) does not take any steps in the performance of any duties under the agreement.

Persons exercising, or having the right to exercise, the rights of the person who provided credit under a regulated credit agreement: special purpose vehicles

- 2.11.8 G (1) The exemption in paragraph 55 of the Schedule to the *Exemption Order* covers special purpose vehicles and other entities which are part of a structured finance transaction and which meet the specified conditions. It confers exemption from the *general prohibition on a person* (“P”) for the *regulated activity of exercising, or having the right to exercise, the lender’s rights and duties under a regulated credit agreement* (and associated *regulated activities*) where there is an arrangement for an *authorised person* who holds a relevant *permission* to service the loans, or such an arrangement has ended in the previous 30 days.
- (2) The exemption is available to a *person* (“P”) who:
- (a) is not the original *lender*;
  - (b) does not grant or promise to grant, and is not required to grant, *credit* under any *regulated credit agreement*;
  - (c) has entered into a servicing arrangement with an *authorised person* who has permission to carry on the *regulated activities of debt collecting, debt administration or consumer credit lending* (“the servicer”), under which the servicer is to exercise on P’s behalf P’s rights under a *regulated credit agreement* (other than P’s right to dispose of those rights); and
  - (d) does not undertake the regulated activities of *debt counselling, debt adjusting or debt collecting* in relation to a *regulated credit agreement* other than during an “*exempt period*”. An “*exempt period*” is the period of 30 days

beginning on the day after the day on which a servicing arrangement came to an end. Where, for example, a servicing agreement comes to an end suddenly or unexpectedly, P has a grace period of 30 days to find a new servicer and enter into a new servicing arrangement, and may service its own loans in that period without being authorised.

- (3) In addition, P must have arranged for the servicer to comply with:
- (a) any provision of, or made under, the Act applicable to authorised persons that relates to the exercise of the right of the lender under a regulated credit agreement to vary terms and conditions of the agreement; and
  - (b) the requirements of, or made under, section 82 of the CCA (variation of agreements).

Where P varies the agreement itself, P must comply with those provisions and requirements.

- (4) Where P is exempt (as set out above), the exemption also extends to the regulated activities of debt counselling and debt collecting carried on in an exempt period in relation a regulated credit agreement under which P exercises, or has the right to exercise, the rights of the original lender.
- (5) For the purposes of this exemption, activities carried on by P under, or for the purposes of, a servicing arrangement are excluded from the regulated activities of debt counselling and debt collecting in relation to a regulated credit agreement.

Persons exercising, or having the right to exercise, the rights of the person who provided credit under a regulated consumer hire agreement: special purpose vehicles

- 2.11.9 G Paragraph 56 of the Schedule to the Exemption Order confers an exemption analogous to that in paragraph 55 of the Schedule to the Exemption Order and described in PERG 2.11.8G. It applies to the regulated activity of exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement.

...

## 8.14 Other financial promotions

...

Governments, central banks etc (article 34)

8.14.17A G A local authority (in the United Kingdom or elsewhere) is exempt from the financial promotion restriction (that is, the restriction in section 21 of the Act) for a communication which is a non-real time financial promotion or a solicited real time financial promotion. However, this exemption does not apply to a communication which relates to a regulated credit agreement, where entering into the agreement or exercising, or having the right to exercise, the lender's rights and duties under the agreement constitutes the carrying on of an activity of the kind specified in article 60B of the Regulated Activities Order (and where the exclusion in article 72G of that Order does not apply).

...

Insolvency practitioners (article 55B)

8.14.34A G The financial promotion restriction (that is, the restriction in section 21 of the Act) does not apply to a communication which is a non-real time financial promotion or a solicited real time financial promotion by an insolvency practitioner who acts in that capacity (see the definition of "acting as an insolvency practitioner" in article 3 of the Regulated Activities Order). The exemption only applies where the communication is made in the course of carrying on an activity which is excluded from being a regulated activity by virtue of article 72H of the Regulated Activities Order (see PERG 2.9.25G and PERG 2.9.26G).

...

Credit agreements offered to employees by employers (article 72F)

8.14.40 AEA G Article 72F exempts any *financial promotion* which is made to an employee by or on behalf of a *person* in relation to an exempt staff loan. An exempt staff loan is defined as a *credit agreement* which is:

- (1) entered into by the employee as borrower and the employer, or an undertaking in the same group as the employer, as lender offered by a lender to a borrower as an incident of employment with the lender, or with an undertaking in the same group as the lender; and

...

...

**8.17-A Financial promotions concerning consumer credit and consumer hire**

...

Controlled activities

...

8.17-A.8 G The *controlled activities* in PERG 8.17-A.6G and PERG 8.17-A.7G are substantially the same as the *regulated activities* of operating an electronic system in relation to lending, credit broking, debt adjusting and debt counselling (although there are some technical differences between the *controlled activity* of credit broking and the *regulated activity* of credit broking. For example, the credit broking *controlled activity* captures all relevant credit agreements (including those to which the exemption relating to number of repayments to be made in article 60F of the *Regulated Activities Order* applies). Also, an activity is not the *controlled activity* of credit broking to the extent that it constitutes the *controlled activity* of arranging *qualifying credit*). Guidance on these *regulated activities* is given in PERG 2.7.7EG (credit broking), PERG 2.7.7HG (operating an electronic system), PERG 2.7.8BG (debt adjusting) and PERG 2.7.8CG (debt counselling). Agreeing to carry on the above activities also constitutes a *controlled activity*.

...

## 8.21 Company statements, announcements and briefings

...

Article 59: Annual accounts and directors' reports

8.21.11 G Article 59 is capable of applying to *financial promotions* in company statements and briefings where they are accompanied by:

...

- (2) any report prepared and approved by the directors of such a *company* under ~~section 234 and 234A of the Companies Act 1985~~ or sections 414A and 414D of the Companies Act 2006 (strategic reports) or sections 415 and 419 of that Act (directors' reports), or corresponding legislation ~~in Northern Ireland~~ or in another *EEA State*.